

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DVI FINANCIAL SERVICES, INC.,	:	
	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	NO. 00-CV-1666
	:	
ROBERT L. KAGAN, M.D., MAGNETIC	:	
IMAGING SYSTEMS I, LTD., and	:	
MRI SCAN CENTER, INC.,	:	
	:	
Defendants.	:	
	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J.

JANUARY 10, 2002

Presently before this Court is the Defendant MRI Scan Center, Inc.’s (“MRI Scan Center”) Motion for Judgement NOV and/or for a New Trial. The Motion will be denied for lack of prosecution under Local Rule of Civil Procedure 7.1(e). Furthermore, the six grounds alleged in the Motion are without merit.

The present Motion arises from the jury’s determination that MRI Scan Center was liable for the obligations of Magnetic Imaging Systems I, Ltd. (“Magnetic”) at the November 16, 2001 trial. Specifically, the jury was asked: (1) whether they found that “Plaintiff ha[d] proven by a preponderance of the evidence that MRI Scan Center, Inc. expressly or impliedly agreed to assume the obligations of Magnetic Imaging Systems I, Ltd.”; or (2) whether they found that “Plaintiff ha[d] proven by a preponderance of the evidence that MRI Scan Center, Inc. was merely a continuation of Magnetic Imaging Systems I, Ltd.?” The jury answered the first question, regarding assumption of the obligations, in the affirmative and thus did not reach the

second question regarding successor liability.

MRI Scan Center now alleges that it is entitled to a new trial or Judgment NOV because: (1) the Court failed to give a jury instruction regarding partial payments; (2) the Court failed to give the correct burden of proof instruction; (3) the Court failed to give a jury instruction concerning the continuation of an enterprise; (4) the Court improperly allowed evidence of settlement discussions; (5) the Defendants' Rule 50 Motion for Judgment as a matter of law should have been granted; and (6) the verdict was contrary to the great weight of the evidence.

However, Local Rule of Civil Procedure 7.1(e) provides that:

Within fourteen (14) days after filing any post-trial motion, the movant shall either (a) order a transcript of the trial by a writing delivered to the Court Reporter Supervisor, or (b) file a verified motion showing good cause to be excused from this requirement. Unless a transcript is thus ordered, or the movant excused from ordering a transcript, the post-trial motion may be dismissed for lack of prosecution.

LOCAL R. CIV. P. 7.1(e). MRI Scan Center has neither ordered a transcript nor filed a verified motion to be excused from this requirement. Therefore, the Motion will be dismissed for lack of prosecution.

In addition, each of the six grounds alleged for a new trial or Judgment NOV are without merit. First, MRI Scan Center alleges that a new trial must be granted because the Court failed to charge the jury that “[p]artial payment *alone* is insufficient and too speculative upon which to base a finding that a party intended to assume the entire obligation.” (Mot. for New Trial, 2)(emphasis added). MRI Scan Center further alleges that the Plaintiff DVI Financial Services, Inc.’s (“DVI”) only evidence that MRI Scan Center impliedly assumed Magnetic’s

liabilities concerned partial payments made by the Defendant Robert L. Kagan, M.D. (“Kagan”) and MRI Scan Center on Magnetic’s behalf. However, had MRI Scan Center ordered the trial transcripts it possibly would have recalled that DVI’s primary evidence of the assumption of the liabilities was not the partial payments, but was the admissions made by Kagan in his deposition. Therefore, this jury instruction was unnecessary and inapplicable as the partial payments were not the only evidence proffered.

Second, MRI Scan Center alleges that a new trial is necessary because the Court failed to charge the jury on the correct burden of proof standard because it did not state that “[y]ou must find that the Plaintiff has proved *each and every essential element of one of these scenarios* by a preponderance of the evidence.” (*Id.* at 3)(emphasis original). However, MRI Scan Center does not state what language it believes the Court did use, and without the trial transcripts it is impossible to discover, verbatim, the language of the actual charge. However, our recollection is that the charge was proper, and thus this claim is without merit.

Third, MRI Scan Center alleges that a new trial must be granted because the Court failed to charge the jury on the Floridian legal “criteria for finding continuation of an entity to be a successor entity.” (*Id.*). However, as stated above, the jury did not reach the question of whether MRI Scan Center was a continuation of, or successor of, Magnetic and thus any failure to give such an such instruction is irrelevant and thus harmless.¹

Fourth, MRI Scan Center alleges that a new trial must be granted because the

¹ MRI Scan Center also has given no competent support for why Florida law should have been utilized on this or any other issue in the case. Pennsylvania law has been used, without objection, since the inception of this case, and it was only at trial, when the Defendants attempted to insert Florida case law into their proposed jury instructions, that this issue in any way surfaced.

Court improperly allowed in evidence of settlement discussions. Prior to trial, we denied the Defendants' Motion in Limine to exclude documents which they alleged were confidential and privileged as settlement negotiations. However, the documents at issue do not contain any suggestion that they were the product of a settlement negotiation. The only evidence which purportedly connects the documents to a settlement is Kagan's testimony which is contradictory. Because we found that the documents were not an offer to compromise nor were they part of any settlement negotiations, they were properly admitted into evidence. Therefore, this claim is without merit.

Fifth, MRI Scan Center alleges that the Defendants' Rule 50 Motion for Judgment as a Matter of Law should have been granted. MRI Scan Center argues that when viewing the evidence in the light most favorable to DVI, there was no question of material fact for the jury and that any verdict other than the one directed by MRI Scan Center was erroneous under the governing law. See Macleary v. Hines, 817 F.2d 1081, 1083 (3rd Cir. 1987). First MRI Scan Center argues that under Florida law regarding successor liability, the jury could not have found that MRI Scan Center was the successor of Magnetic, and thus MRI Scan Center could not be liable for Magnetic's obligations. As stated above, the jury did not find successor liability. In fact, according to the Verdict Form, the jury never even considered that question. Instead, the jury found that MRI Scan Center had explicitly or impliedly assumed liability for the obligations. MRI Scan Center next renews its argument that partial payment of an obligation alone is insufficient to find the assumption of that obligation. Again, as clearly stated above, the partial payment of Magnetic's obligations was not even the most prominent evidence of assumption, let alone the only evidence. Therefore, this claim is without merit.

Sixth, and last, MRI Scan Center alleges that the verdict is contrary to the great weight of the evidence. MRI Scan Center once again argues that partial payment of an obligation alone is insufficient to find the assumption of that obligation. This argument has been dealt with above. Furthermore, MRI Scan Center argues, for the first time, that during Kagan's admissions concerning MRI Scan Center's assumption of Magnetic's obligation he was confused. Kagan's testimony does not show any confusion:

Q: And you took those leases back from Metropolitan; is that Correct?

A: What do you mean by you took those leases back? I mean, I assumed responsibility for those two leases, correct.

The Witness: I thought I did. When I say I, again, the MRI Scan Center, Inc., which is the new entity, agreed to take responsibility for the leases.

(Kagan Dep., 25-26). Furthermore, MRI Scan Center's arguments concerning contract interpretation miss the mark as the dispute is not between the parties to the lease contracts, Kagan and Metropolitan Health Services. Instead, the dispute concerns what Kagan intended for his company, MRI Scan Center, in which case Kagan's admissions control, not contract interpretation principles. Here, a new trial is not warranted because the record does not show that "the jury's verdict resulted in a miscarriage of justice" nor does "the verdict, on the record, cr[y] out to be overturned or shock[] the conscience." Williamson v. Consolidated Rail Corp., 926 F.2d 1344, 1353 (3d Cir. 1991).

For all of the foregoing reasons, MRI Scan Center's Motion must be denied. An appropriate Order follows.

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	:	

ORDER

AND NOW, this 10th day of January, 2002, upon consideration of the Motion for Judgment NOV and/or for a New Trial (Dkt. No. 66) filed by Defendant MRI Scan Center Inc., and any Responses thereto, it is hereby ORDERED that the Motion is DENIED.

BY THE COURT:

ROBERT F. KELLY,	Sr. J.
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